

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

SONIA D. AMEY,

Plaintiff,

-against-

5:22-CV-682 (LEK/DEP)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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**MEMORANDUM-DECISION AND ORDER**

**I. INTRODUCTION**

Plaintiff Sonia D. Amey brings this action pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3) against the Commissioner of Social Security (“Commissioner”). Plaintiff appeals the Commissioner’s determination that Plaintiff was not disabled at the relevant times and is therefore ineligible for the disability insurance and supplemental security income benefits for which Plaintiff applied. See Dkt. No. 11 (“Appeal”). The Honorable David E. Peebles, United States Magistrate Judge, reviewed Plaintiff’s Appeal and, on August 4, 2023, issued a report and recommendation regarding the Appeal. Dkt. No. 21 (“Report and Recommendation”). Judge Peebles recommended that the Appeal be granted, finding that the Commissioner’s determination “did not result from the application of proper legal principles and is not supported by substantial evidence.” Id. at 26.

No party has filed objections to the Report and Recommendation. For the reasons that follow, the Court adopts the Report and Recommendation in its entirety.

**II. BACKGROUND**

The Court assumes familiarity with Judge Peeble’s Report and Recommendation, as well as with Plaintiff’s factual allegations as detailed therein. See R. & R. at 2–7.

### **III. STANDARD OF REVIEW**

“Within fourteen days after being served with a copy [of the Magistrate Judge’s report and recommendation], any party may serve and file written objections to such proposed findings and recommendations as provided by rules of the court.” 28 U.S.C. § 636(b)(1)(C); see also L.R. 72.1. However, if no objections are made, a district court need only review a report and recommendation for clear error. See DiPilato v. 7-Eleven, Inc., 662 F. Supp. 2d 333, 339 (S.D.N.Y. 2009) (“The district court may adopt those portions of a report and recommendation to which no timely objections have been made, provided no clear error is apparent from the face of the record.”). Clear error “is present when upon review of the entire record, the court is left with the definite and firm conviction that a mistake has been committed.” Rivera v. Fed. Bureau of Prisons, 368 F. Supp. 3d 741, 744 (S.D.N.Y. 2019). Additionally, a district court will ordinarily refuse to consider an argument that could have been, but was not, presented to the magistrate judge in the first instance. See Hubbard v. Kelley, 752 F. Supp. 2d 311, 312–13 (W.D.N.Y. 2009) (“In this circuit, it is established law that a district judge will not consider new arguments raised in objections to a magistrate judge’s report and recommendation that could have been raised before the magistrate but were not.” (internal quotation marks omitted)). Upon review, a court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C).

### **IV. DISCUSSION**

No party objected to the Report and Recommendation “[w]ithin fourteen days after being served with a copy” of it. 28 U.S.C. § 636(b)(1)(C). Accordingly, the Court reviews the Report and Recommendation for clear error. Having found none, the Court approves and adopts the Report and Recommendation in its entirety.

**V. CONCLUSION**

Accordingly, it is hereby:

**ORDERED**, that the Report and Recommendation (Dkt. No. 21) is **APPROVED and ADOPTED in its entirety**; and it is further

**ORDERED**, that Plaintiff's Appeal (Dkt. No. 11) is **GRANTED**; and it is further

**ORDERED**, the Commissioner of Social Security's decision be **VACATED**; and it is further

**ORDERED**, that this matter be **REMANDED** to the Commissioner of Social Security for further proceedings consistent with the Report and Recommendation; and it is further

**ORDERED**, that the Clerk serve a copy of this Memorandum-Decision and Order on all parties in accordance with the Local Rules.

**IT IS SO ORDERED.**

DATED: August 30, 2023  
Albany, New York



LAWRENCE E. KAHN  
United States District Judge